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WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

WILLIAM DAVIS : DOCKET NO. 2:06-cv-2143
Section P
VS. : JUDGE MINALDI
C. PAUL PHELPS CORRECTIONAL, : MAGISTRATE JUDGE WILSON
ET AL.

JUDGMENT OF DISMISSAL

Currently before the court is a "Motion to Dismiss and to be Relieved of Paying the Filing Fee" [doc. 6] filed by *pro se* plaintiff, William Davis. By this motion, plaintiff seeks to dismiss the above-captioned civil rights action and to be relieved of paying the \$350 filing fee.

Plaintiffs originally filed this lawsuit on November 9, 2006. On November 17, 2006 the court issued a deficiency notice instructing the plaintiff to file an application to proceed *in forma pauperis* within thirty (30) days and warning the plaintiff that failure to do so would result in his complaint being stricken from the record. On December 27, 2006, the plaintiff filed a motion to proceed *in forma pauperis*. This motion was granted on December 28, 2006, and the order granting the motion informed the plaintiff that he would be required to pay the entire \$350 by making partial payments from his prison account. In the motion currently before the court, the plaintiff indicates that he was not aware of these requirements at the time that he filed his civil rights action

Generally a prisoner-plaintiff is not relieved of his obligation to pay a filing fee merely because his case is dismissed, voluntarily or involuntarily. *See Williams v. Roberts*, 116 F.3d 1126 (5th Cir. 1997)(filing fee is assessed for the privilege of bringing a lawsuit and must be paid

regardless of the outcome of the lawsuit); *In Re Tyler*, 110 F.3d 528, 529 (8th Cir. 1997).

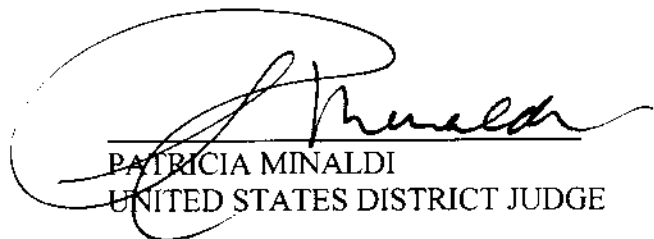
However, because the plaintiff was not aware of the filing fee requirement, and because the plaintiff moved to dismiss this civil rights action soon after being put on notice of his obligation to pay the entire \$350 filing fee, it is

ORDERED that the motion be GRANTED and that this civil rights action be DISMISSED WITHOUT PREJUDICE and that the plaintiff be relieved of his obligation to pay the filing fee.

IT IS FURTHER ORDERED that the motion be DENIED to the extent the plaintiff seeks to be reimbursed for amounts already paid towards the filing fee.

THE CLERK OF COURT IS DIRECTED to mail a copy of the updated civil rights instructions and form for prisoner civil rights actions to Phelps Correctional Center, P.O. Box 1056, DeQuincy, LA 70633.

Lake Charles, Louisiana, this 28 day of January, 2007.


PATRICIA MINALDI
UNITED STATES DISTRICT JUDGE